

MISSOURI SENTENCING AND CORRECTIONS OVERSIGHT COMMISSION ANNUAL REPORT

DECEMBER 11, 2013



Submitted Pursuant to Section 217.147, RSMo

THE COMMISSION SHALL ISSUE A REPORT TO THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, SENATE PRESIDENT PRO TEMPORE, CHIEF JUSTICE OF THE MISSOURI SUPREME COURT, AND GOVERNOR ON DECEMBER 31, 2013, AND ANNUALLY THEREAFTER, DETAILING THE EFFECTS OF THE SECTIONS LISTED IN SUBDIVISION (1) OF SUBSECTION 4 AND PROVIDING THE DATA AND ANALYSIS DEMONSTRATING THOSE EFFECTS. THE REPORT MAY ALSO RECOMMEND WAYS TO REINVEST ANY COST SAVINGS INTO EVIDENCE-BASE PRACTICES TO REDUCE RECIDIVISM AND POSSIBLE CHANGES TO SENTENCING AND CORRECTIONS POLICIES AND STATUTES.

December 11, 2013

The Honorable Jeremiah W. Nixon
Governor of Missouri
State Capitol, Room 216
Jefferson City, MO 65101

The Honorable Tom Dempsey
Missouri Senate
President Pro Tempore
State Capitol, Room 326
Jefferson City, MO 65101

The Honorable Timothy Jones
Missouri House of Representatives
Speaker
State Capitol, Room 308
Jefferson City, MO 65101

Dear Governor, Mr. President and Mr. Speaker:

Pursuant to Section 217.147, RSMo, the Sentencing & Corrections Oversight Commission presents this annual report. The Commission conducted three meetings in 2013 to review information and compile its report: September 10, November 8, and December 9.

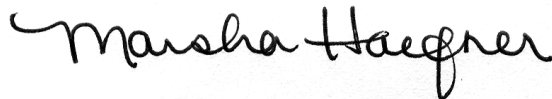
The Commission wishes to express its gratitude to the staff of participating agencies and organizations for their hard work and contributions to the work product of the Commission.

Enclosed is our report and recommendations.

Sincerely,



Senator Bob Dixon, Co-Chair



Representative Marsha Haefner, Co-Chair

MISSOURI SENTENCING AND CORRECTIONS OVERSIGHT COMMISSION MEMBERSHIP

Hon. Bob Dixon, Co-Chair

State Senator (District 30)
Chair, Senate Committee on Judiciary and Civil
and Criminal Jurisprudence

Hon. Marsha Haefner, Co-Chair

State Representative (District 95)
Chair, House Committee on Appropriations—
Public Safety and Corrections

Hon. Jolie Justus

State Senator (District 10)
Senate Minority Floor Leader

Ms. Cathy R. Kelly

Director, Missouri Public Defender System

Hon. Brandon Ellington

State Representative (District 22)

Mr. Ellis McSwain

*Chairman, Missouri Board of Probation and
Parole*

Ms. Kathleen Tofall*

*Executive Director, Victims' Services Unit
St. Louis Circuit Attorney's Office*

Hon. Mary Rhodes Russell

Chief Justice, Supreme Court of Missouri

Vacant Slot*

Missouri Association of Counties

Hon. David A. Dolan

Circuit Judge, 33rd Judicial Circuit

Vacant Slot*

Missouri Sheriff's Association

Mr. Jason Lamb

*Director, Missouri Office of Prosecution
Services*

Mr. George A. Lombardi

Director, Missouri Department of Corrections

***Gubernatorial Appointee**

MISSOURI SENTENCING AND CORRECTIONS OVERSIGHT COMMISSION

ANNUAL REPORT – 2013

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1. INTRODUCTION

This is the first Annual Report of the Missouri Sentencing and Corrections Oversight Commission, which is submitted in compliance with RSMo 217.147. The report meets the statutory requirement of detailing the effects of the Justice Reinvestment Act, to include analysis and a review of related data. Additionally, as this is the initial report submitted by the commission, the pages to follow provide background information on the Justice Reinvestment Act and activity since the act became law.

2. SENTENCING AND CORRECTIONS OVERSIGHT COMMISSION

The Justice Reinvestment Act established the Sentencing and Corrections Oversight Commission. The commission is responsible for:

- *Monitoring and assisting the implementation of sections 217.703, 217.718, and subsection 4 of section 559.036, and evaluating recidivism reductions, cost savings, and other effects resulting from the implementation;*
- *Determining ways to reinvest any cost savings to pay for the continued implementation of the sections listed above and other evidence-based practices for reducing recidivism; and*
- *Examining the issue of restitution for crime victims, including the amount ordered and collected annually, methods and costs of collection, and restitution's order of priority in official procedures and documents.*

The membership of the commission is detailed in section 217.147, RSMo , and consists of the following:

Nine ex officio, voting members

- The chair of the Senate Judiciary Committee;
- The ranking member of the Senate Judiciary Committee;
- The chair of the House Appropriations-Public Safety and Corrections Committee;
- The ranking minority member of the House Appropriations-Public Safety and Corrections Committee;
- The director of the Missouri State Public Defender System (or designee);
- The executive director of the Missouri Office of Prosecution Services (or designee);
- The director of the Missouri Department of Corrections;
- The chairman of the State Board of Probation and Parole (or designee);
- The chief justice of the Missouri Supreme Court (or designee);

Three gubernatorial appointees, subject to Senate confirmation

- A victim's advocate;
- A representative from the Missouri Sheriffs' Association;

- A representative of the Missouri Association of Counties; and

One judicial appointee

- A circuit court judge to be appointed by the chief justice of the Missouri Supreme Court

The chair of the Senate Judiciary Committee and the chair of the House Appropriations-Public Safety and Corrections Committee serve as co-chairs of the Commission.

3. BACKGROUND OF JUSTICE REINVESTMENT IN MISSOURI

a. Working Group on Sentencing and Corrections

On December 13, 2011, the Missouri Working Group on Sentencing and Correctionsⁱ issued a consensus report containing recommendations designed to “*improve public safety, hold offenders accountable, and contain corrections costs by strengthening community supervision.*”ⁱⁱ The Working Group had been created in June 2011 at the direction of Chief Justice William “Ray” Price, Governor Jeremiah “Jay” Nixon, President Pro Tem of the Senate Robert Mayer and Speaker of the House Steven Tilley. Its purpose was to explore the effectiveness of Missouri’s corrections system and develop strategies to reduce recidivism.

In its consensus report, the Working Group noted that between 1990 and 2005, Missouri’s prison population had grown from 14,074 to 30,446. After 2005, prison growth had leveled off and increased by just one percent.ⁱⁱⁱ The continued growth after 2005, though moderate, still contrasted with a reduction in violent crime (-2%) and overall crime (-15%) within Missouri during the decade ending in 2009.^{iv} The Working Group found that the total number of offenders incarcerated within the Missouri Department of Corrections presented an increasing financial burden on state resources.

The Missouri Working Group on Sentencing and Corrections conducted a significant review of data available through the Department of Corrections and, with the assistance of the Public Safety Performance Project of the Pew Center on the States and the U. S. Department of Justice, analyzed national trends. In conjunction with the goals identified by the sponsors of the group, the review led to the development of the following policy recommendations:

- Strengthen Community Supervision and Reduce Revocations to Prison
 - *Earned Discharge from Probation and Parole:* Incentivize offenders who comply with the conditions of supervision by awarding a credit that reduces the term of supervision by 30 days for every 30 days of compliance.

This policy incorporates incentives to enhance offender motivation and deter violations; moves successful offenders off supervision so that probation and

parole officers can focus on high-risk offenders; and frontloads supervision resources during the time period that offenders are most likely to commit a new crime or break the rules.

- *Administrative Jail Sanctions:* Grant probation and parole officers the authority to utilize short jail stays as a sanction for violations of supervision.

Under current law, probation and parole does not have this authority unless it is explicitly included in the court or Board order; this change would allow probation and parole to impose the sanction unless it is explicitly forbidden in the court or Board order. In addition to allowing probation and parole officers to respond to violations with swift, certain, and proportional sanctions, the policies provide another option – short of revocation – for responding to technical violations of supervision.

- *Cap on Revocation Time:* Require that probationers be placed in one of the Department of Corrections' 120-day or alternative programs (shock incarceration or drug treatment) on their first revocation for a technical violation.

This policy will ensure that sanctions are proportional to the violation and focus prison space on violent, chronic, and career criminals.

- Ensure Quality Implementation, Sustainability and Ongoing Oversight
 - *Oversight Body:* Statutorily create a formal oversight body to monitor implementation of the above reforms, evaluate outcomes, and certify savings.
 - *Victim Restitution:* Ensure the criminal justice system holds offenders accountable for victim restitution and policymakers address the concerns of crime victims and survivors.
 - *Missouri's Criminal Code:* Revisit Missouri's Criminal Code, supporting a revision to the code, using as a starting point the recommendations of the Missouri Bar Criminal Law Committee, including the redefinition and reclassification of controlled substances and reduction of the crack-powder cocaine sentencing disparity. ^v

b. Justice Reinvestment Act (HB 1525 – 2012)

During the 2012 legislative session, Senator Jack Goodman and Representative Gary Fuhr introduced companion Justice Reinvestment Acts in each chamber of the General Assembly. The legislation eventually passed as SCS HCS HB 1525 and became law on August 28, 2012. In addition to its creation of the Sentencing and Corrections Oversight Commission, the legislation included three primary provisions, portions of which are excerpted below:

EARNED COMPLIANCE CREDITS (RSMo 217.703)

With the exception of an offender who is subject to lifetime supervision or those placed on probation, parole, or conditional release for certain specified offenses, the Division of Probation and Parole within the Department of Corrections must award earned compliance credits to any offender who is:

- *Placed on probation, parole, or conditional release for a violation of a drug crime in Chapter 195, RSMo, or for a class C or D felony, excluding certain identified offenses.*
- *Supervised by the board, and is in compliance with the conditions of supervision imposed by the sentencing court or Board.*

Earned compliance credits must reduce the term of probation, parole, or conditional release by 30 days for each full calendar month of compliance with all terms of supervision but may be suspended or rescinded if the offender violates the conditions of supervision.

An offender deemed to be an absconder, as defined in the bill, cannot earn credits.

Once the combination of time served in custody; on probation, parole, or conditional release; and earned compliance credits satisfy the total term of probation, parole, or conditional release, the Board or sentencing court must order final discharge of the offender if the offender has completed at least two years of his or her sentence.

ADMINISTRATIVE JAIL SANCTIONS (RSMo 217.718)

As an alternative to the revocation proceedings, a probation or parole officer may place an offender in the county jail.

The first period of detention cannot exceed 48 hours, but subsequent periods may exceed 48 hours. However, the total cannot exceed 360 hours in any year.

The officer must present the offender with a report detailing the violation and advise the offender of the right to a hearing before the court or Board prior to the period of detention.

The division must reimburse the county jail for the costs of detention at a rate to be determined by the department, which must be at least \$30 per day per offender and subject to appropriation by the General Assembly.

MANDATORY PLACEMENT IN A 120-DAY PROGRAM (RSMo 559.036)

When an eligible offender has violated a condition of probation and continuation, modification, enlargement, or extension of the probation period is not appropriate, the court must order the offender to be placed in one of the Department of Corrections' 120-day programs.

Eligibility for the mandatory 120-day program includes:

- *Offenders who are on probation for a class C or D felony or a drug offense;*

- *Who have not already been placed in a 120-day program for the same offense or during the same probation term; and,*
- *Whose probation violation does not involve absconding or being arrested on suspicion of, being found guilty of, or pleading guilty to any crime; and who has not violated any conditions of probation involving the possession or use of weapons or a stay-away condition,*
- *However, upon its own motion or a motion of the prosecuting or circuit attorney, the court may make a finding that an offender is not eligible for certain identified offenses.*

Upon receiving the order from the court for placement, the Department of Corrections must conduct an assessment and place the offender in the appropriate 120-day program.

Once the offender has successfully completed the program, the court must release the offender to continue to serve the term of probation without modifying, enlarging, or extending the term based on the same violation.

Time served in the program must be credited as time served against the offender's sentence.

c. Related Legislation (HB 215 – 2013)

In 2013, during the 1st Regular Session, the General Assembly passed SS SCS HCS HB 215, which was signed by the governor and became law on August 28, 2013. In its final form, this comprehensive criminal justice bill included two relevant statutory changes: one related to modifications of the Justice Reinvestment Act and another related to restitution for crime victims.

PLACEMENT IN A 120-DAY PROGRAM (RSMo 559.036)

The following change was made to section 559.036, RSMo:

“Unless the defendant consents to the revocation of probation, if a continuance, modification, enlargement or extension is not appropriate under this section, the court shall order placement of the offender in one of the department of corrections’ one hundred twenty-day programs...”

The new language (denoted in bold) allows for greater flexibility in sentencing. Under current law, a court must place certain defendants who have violated the terms of probation in one of the Department of Corrections’ 120-day programs before revoking probation. The new section provides that a court may revoke a defendant’s probation without placing the defendant in a 120-day program if the defendant consents to the revocation. A defendant’s suspended imposition of sentence probation may be revoked, and the defendant may be resentedenced to probation with a suspended execution of sentence.

Restitution for Crime Victims (RSMo 559.100, 559.105, and 570.120)

The final version of HB 215 also included modifications related to restitution for crime victims, one of the policy areas reviewed by the Working Group on Sentencing and Corrections.

These amended sections provide that restitution must be paid through the office of the prosecuting or circuit attorney and allow a prosecuting attorney who takes action to collect restitution to collect an administrative handling cost. The proceeds are to be deposited by the county treasurer into an "Administrative Handling Cost Fund" to be expended by the prosecuting attorney. Restitution collected from a person found guilty of passing a bad check must also be put in the "Administrative Handling Cost Fund". These sections expand the current restitution law so that it applies to any person found guilty of any offense and repeals the provisions requiring the restitution include repairs, towing, and storage fees. In addition, a person must be required to make restitution as a condition of parole.

The court is allowed to set an amount of restitution to be taken from the inmate's account while incarcerated by the Department of Corrections.

The payment of restitution may be collected as a condition of conditional release or parole by the prosecuting attorney and the prosecuting attorney may refer any failure to make restitution as a violation of parole or the terms of conditional release.

4. IMPLEMENTATION OF JUSTICE REINVESTMENT

The implementation status of the three primary provisions, beyond the establishment of the Sentencing and Corrections Oversight Commission, of the Justice Reinvestment Act are as follows:

a. Earned Compliance Credit (RSMo 217.703)

By reducing the term of supervision by 30 days for every month of supervision compliance, Earned Compliance Credit (ECC) was designed to serve as an incentive for offenders to comply with the conditions of their supervision. In developing this recommendation, the average term of probation supervision in Missouri, which is approximately 40% longer than the national average (nearly five years as opposed to approximately 3 years), was considered. Additionally, research revealed that failures on supervision in Missouri most often occur early in the supervision cycle (83% of probation revocations and 98% of parole revocations occur within the first 24 months of supervision).

The implementation of the ECC was a challenge for the Department of Corrections and its partners within the court system. This new provision applied to all offenders under supervision at the time of the statute change, and department staff was required to essentially perform hand calculations initially to determine the monthly credit. A technology solution was developed after approximately three months which was then modified and enhanced by the end of FY13. The ECC calculation process is a very

complicated computer program but it is now accurately calculating ECC credit for the Department of Corrections, state courts, and prosecuting attorneys.

b. Administrative Jail Sanction (RSMo 217.718)

The administrative jail sanction is an alternative to incarceration for offenders that have committed technical violations. The goal of the sanction is to be swift, certain and proportional. A probation and parole officer can impose an initial administrative jail sanction of two days—with more if violations continue. The HOPE Program, a specialty court in Hawaii that imposes jail sanctions immediately for technical supervision violations, was considered in the development of this approach. Although the initial research associated with the HOPE Program has been positive, data on the effectiveness of administrative jail sanctions is limited.

The implementation of the administrative jail sanction remains pending. The Division of Probation and Parole has received a \$100,000 appropriation for the sanction to reimburse participating jails at the rate of \$30 per day (A jail can decline to participate). In the fall of 2012 and into 2013, the Division of Probation and Parole worked with the Office of State Court Administrator's Office to identify potential specialty courts willing to use the administrative jail sanction within a HOPE Program model. A few possible participants were identified; however, movement forward has slowed due to contract requirements associated with the recently implemented PREA (Prison Rape Elimination Act) guidelines. This is an impediment that the agency is still trying to work through with some jurisdictions.

Beyond the above approach, administrative jail sanction contracts are currently being developed with Jackson County and St. Louis City to utilize the administrative jail sanction in conjunction with police partnerships in the supervision of offenders that have had affiliations with gangs and weapons activity. At this time, it appears the contracts with these jurisdictions will be executed before the end of FY 2014, with the use of the existing administrative jail sanction appropriation.

c. Mandatory Placement in a 120-Day Program (RSMo 559.036)

The mandatory placement in a 120-Day Program for some technical violators is called a Court Ordered Detention Sanction (CODS). It was designed to preserve prison space for violent and chronic offenders by ensuring a consistent approach to technical violations. This is a sanction that is to be imposed when all other supervision options have been exhausted and the offender would otherwise be revoked. The research showed that on average probation technical violators serve just over one year when revoked. The goal of CODS is to impose a significant sanction when indicated (120 days shock probation or institutional treatment), but otherwise not require an institutional placement of a year or longer, in order to preserve institutional bed space for more violent offenders.

The implementation of the CODS has proved challenging for the Department of Corrections, requiring significant changes to procedure and process in advance of the August 28, 2012 implementation. Courts, prosecutors, and public defenders have also been required to incorporate this new element into existing practices related to

sentencing and plea bargains. The changes were made and this sentencing provision was implemented in conjunction with the effective date of the statute change.

5. JUSTICE REINVESTMENT ACT DATA

The following chart shows the monthly total of Court Ordered Detention Sanction (CODS) 120-day sentences (RSMo 559.036) and Earned Compliance Credit (ECC) discharges (RSMo 217.703), since the act became law:

Court Ordered Detention Sanction and Earned Credit Compliance Discharges since Enactment of HB1525

	<i>Court Ordered Detention Sanction</i>	<i>Earned Compliance Credit Discharge</i>
2012-09	17	0
2012-10	39	656
2012-11	43	1,079
2012-12	39	1,291
2013-01	42	1,386
2013-02	32	1,042
2013-03	70	1,119
2013-04	60	1,114
2013-05	77	1,040
2013-06	69	1,155
2013-07	72	1,200
2013-08	86	1,215
2013-09	71	1,252
2013-10	76	1,116
2013-11*	25	560
TOTAL	818	15,225

**To November 15, 2013*

The net impact of CODS on prison beds has been favorable, but savings through the use of this alternative to revocation have been off-set by a continued increase in other sentencing. As such, since the Justice Reinvestment Act became law on August 28, 2012, there has been a rise in institutional population:

Institutional Population

August 28, 2012: 31,210
November 15, 2013: 31,825
Increase: 615

A primary source of the increase in the prison population during FY13 and FY14 has been an increase in probation revocations. It should be noted that there has been a rise in new probation sentences during each of the last four years. As such, the increase in probation revocations is largely due to a larger pool of new probation sentences. In FY14, as of November 15, 2013, new court commitments have increased by 3.9%, probation revocations by 15.5%, and parole returns by 7.4%. Overall admissions have increased by 9.1%, while releases have increased by 4.4%.

The offense type of new admissions since the enactment of the Justice Reinvestment Act has been primarily nonviolent offenses (particularly Burglary 2nd, Stealing and Receiving Stolen Property). There has been a decline in violent, sex and child abuse and DWI admissions.

New Admissions

Offense Type	FY11	FY12	FY13	FY14 (to Nov.15,2013)	FY14 annualized
Drug Offenses	2,876	2,940	2,890	1,103	2,917
DWI	923	915	822	253	669
Nonviolent	4,342	4,752	4,515	2,005	5,303
Sex and Child Abuse	720	621	647	237	627
Violent	2,063	2,039	1,990	714	1,888
Total	10,924	11,267	10,864	4,312	11,405

New Felony Sentences Received by the DOC

Probation (SIS, SES)	15,860	16,886	18,016	4,643	18,421
120-Day Sentences	2,737	2,865	2,893	718	2,849
Prison	6,322	6,478	6,521	1,693	6,717
Total	24,919	26,229	27,430	7,054	27,986

The impact of ECC has been a reduction in the field population supervised by the Division of Probation and Parole of approximately 5,500 cases, from 73,627 cases in August 2012 to 68,066 through October 2013. Even with the caseload decrease, based on the work hours developed through an agency time study, the workload of the Division of Probation and Parole remains above capacity. The reduced field caseload has helped staff meet critical statutory and policy requirements, but it has not resulted yet in actual savings.

An important objective of the Justice Reinvestment Act was a reduction in recidivism. In the estimation of the Commission, it is too early to fully calculate the impact of CODS and ECC in this particular area. The Missouri Department of Corrections intends to measure the reduction in recidivism by comparing the outcomes of offenders discharged under the statute to the recidivism rates of offenders who would have been eligible for earned compliance credits, but who started supervision in the years prior to enactment of the Justice Reinvestment Act. It is DOC practice to calculate recidivism rates after one or two years under supervision. As a result, recidivism rates, and appropriate comparisons, should be available for the 2014 commission report.

6. FUTURE COMMISSION ACTIVITY

In 2014, the initial goal of the Commission will be to refine its governance structure and determine a schedule of meetings best suited to fulfill its statutory duties, including the preparation of the 2014 Annual Report. Its minimum statutory obligations include two meetings per year, but the Commission will continue to meet regularly during 2014. Early in the year, the likely focus will be the review and evaluation of any proposed legislation related to the Commission's statutory responsibilities. In a manner and format to be determined by the Commission, it will receive regular statistical reports from the Department of Corrections on admissions, correctional capacity, and recidivism rates, as well as other specified data. The Commission will also seek to provide members with an update on justice reinvestment research findings nationwide, in order to provide context for Missouri's efforts and help guide future activities and recommendations.

The ability of the Commission to properly perform its duties will depend in large part on the collection of relevant empirical data. Therefore, the Commission will continue to improve and expand its collection of empirical data, in conjunction with the Department of Corrections. Furthermore, the Commission will partner with the Office of State Courts Administrator, the Missouri Office of Prosecution Services, and the Missouri Public Defender System to develop the necessary survey tools to gather feedback from participants in the criminal justice system on the Justice Reinvestment Act, its impact, and any practical challenges emerging from its implementation.

At its November 8, 2013, meeting, Commission members approved the creation of a subcommittee to explore the conversion of restitution orders to civil judgments and identify best practices in the collection of restitution. The subcommittee of six Commission members will be chaired by Judge David Dolan.

7. RECOMMENDATIONS FROM THE COMMISSION

Because the 2013 report will be the first report of the Sentencing and Corrections Oversight Commission, it is expected that it will be limited in scope. As noted above, several provisions of the 2012 Justice Reinvestment Act are still being fully implemented. Additional statutory changes have already been enacted in 2013, and took effect mere months ago. Furthermore, although it can be expected to grow as more time passes, some statistical information, such as recidivism rates, is scarce or nonexistent at this early date. With full implementation and the collection of sufficient data and feedback, the ability of the Commission to conduct a more complete, proper evaluation of the Justice Reinvestment Act and associated measures will increase.

a. Legislative Recommendations

The following recommendation is based on input received by members of the Commission from the various sectors of the justice system they represent, during the initial implementation of the Justice Reinvestment Act.

Legislative Recommendation #1: Based on input received by Commission members from various sectors of the justice system directly engaged with the implementation of the new Earned Compliance Credit provision, **the Commission recommends that the General Assembly amend section 217.703, RSMo, to provide a mechanism, when appropriate, to discharge a person under subsection 7, while still providing for the collection of restitution through alternative means.**

Legislative Recommendation #2: Recognizing the value of a comprehensive revision of Missouri's Criminal Code and its potentially beneficial impact on Missouri's corrections system, **the Commission recommends that the General Assembly enact legislation to update the Criminal Code at the earliest possible opportunity.**

b. Reinvestment Recommendations

The Commission makes no reinvestment recommendations in this initial report.

8. CONCLUSION

In 2011, leaders in all three branches of Missouri government came together to form the Missouri Working Group on Sentencing and Corrections. Based on its recommendations, the Justice Reinvestment Act was enacted into law in 2012 with overwhelming support. It was the purpose of justice reinvestment to improve public safety, hold offenders accountable, and contain prison spending. In the words of former Chief Justice Ray Price, our focus must be to "deliver taxpayers a better return on their public safety investment."

As a successor to the Missouri Working Group, the Sentencing and Corrections Oversight Commission represents a commitment on the part of all three branches of Missouri government and partners across our state's criminal justice system to realize the full potential of the Justice Reinvestment Act.

Implementation of the Justice Reinvestment and associated statutory changes is a process of continuous improvement. As additional data becomes available in the coming year, the Sentencing and Corrections Oversight Commission will work to fulfill its statutory duties.

END NOTES

ⁱ Membership of the Missouri Working Group on Sentencing and Corrections:

- *Legislative Branch appointments*
- Senator Jack Goodman (R- District 29), co-chair
- Senator Jolie Justus (D- District 10)
- Senator Mike Parson (R- District 28)
- Representative Chris Kelly (D- District 24), co-chair
- Representative Gary Fuhr (R- District 97)
- Representative Penny Hubbard (D- District 58)
- Representative Rory Ellinger (D- District 72)
- *Judicial Branch appointments*
- Judge W. Ray Price, Missouri Supreme Court
- Judge David Dolan, 33rd Judicial Circuit Court
- Cat Kelly, Director, Missouri State Public Defender
- Jason Lamb, Executive Director, Office of Prosecution Services
- *Executive Branch appointments*
- Page Bellamy, Office of Attorney General Chris Koster
- Director George Lombardi, Department of Corrections
- Chairman Ellis McSwain, Division of Probation and Parole, DOC
- Gail Vasterling, Deputy Counsel, Office of Governor Jay Nixon

ⁱⁱ Missouri Working Group on Sentencing and Corrections – Consensus Report, December 2011

ⁱⁱⁱ Ibid.

^{iv} Federal Bureau of Investigation Uniform Crime Report (<http://www.fbi.gov/about-us/cjis/ucr/ucr-publications#Crime>).

^v Missouri Working Group on Sentencing and Corrections – Consensus Report, December 2011

APPENDIX

Missouri Revised Statutes

Chapter 217 Department of Corrections Section 217.147

August 28, 2013

Sentencing and corrections oversight commission, members, terms, duties, report, expiration date.

217.147. 1. There is hereby created the "Sentencing and Corrections Oversight Commission". The commission shall be composed of thirteen members as follows:

- (1) A circuit court judge to be appointed by the chief justice of the Missouri supreme court;
- (2) Three members to be appointed by the governor with the advice and consent of the senate, one of whom shall be a victim's advocate, one of whom shall be a representative from the Missouri Sheriffs' Association, and one of whom shall be a representative of the Missouri Association of Counties;
- (3) The following shall be ex officio, voting members:
 - (a) The chair of the senate judiciary committee, or any successor committee that reviews legislation involving crime and criminal procedure, who shall serve as co-chair of the commission and the ranking minority member of such senate committee;
 - (b) The chair of the appropriations-public safety and corrections committee of the house of representatives, or any successor committee that reviews similar legislation, who shall serve as co-chair and the ranking minority member of such house committee;
 - (c) The director of the Missouri state public defender system, or his or her designee who is a practicing public defender;
 - (d) The executive director of the Missouri office of prosecution services, or his or her designee who is a practicing prosecutor;
 - (e) The director of the department of corrections, or his or her designee;
 - (f) The chairman of the board of probation and parole, or his or her designee;
 - (g) The chief justice of the Missouri supreme court, or his or her designee.

2. Beginning with the appointments made after August 28, 2012, the circuit court judge member shall be appointed for four years, two of the members appointed by the governor shall be appointed for three years, and one member appointed by the governor shall be appointed for two years. Thereafter, the members shall be appointed to serve four-year terms and shall serve until a successor is appointed. A vacancy in the office of a member shall be filled by appointment for the remainder of the unexpired term.

3. The co-chairs are responsible for establishing and enforcing attendance and voting rules, bylaws, and the frequency, location, and time of meetings, and distributing meeting notices, except that the commission's first meeting shall occur by February 28, 2013, and the commission shall meet at least twice each calendar year.

4. The duties of the commission shall include:

(1) Monitoring and assisting the implementation of sections 217.703, 217.718, and subsection 4 of section 559.036, and evaluating recidivism reductions, cost savings, and other effects resulting from the implementation;

(2) Determining ways to reinvest any cost savings to pay for the continued implementation of the sections listed in subdivision (1) of this subsection and other evidence-based practices for reducing recidivism; and

(3) Examining the issue of restitution for crime victims, including the amount ordered and collected annually, methods and costs of collection, and restitution's order of priority in official procedures and documents.

5. The department, board, and office of state courts* administrator shall collect and report any data requested by the commission in a timely fashion.

6. The commission shall issue a report to the speaker of the house of representatives, senate president pro tempore, chief justice of the Missouri supreme court, and governor on December 31, 2013, and annually thereafter, detailing the effects of the sections listed in subdivision (1) of subsection 4 and providing the data and analysis demonstrating those effects. The report may also recommend ways to reinvest any cost savings into evidence-based practices to reduce recidivism and possible changes to sentencing and corrections policies and statutes.

7. The department of corrections shall provide administrative support to the commission to carry out the duties of this section.

8. No member shall receive any compensation for the performance of official duties, but the members who are not otherwise reimbursed by their agency shall be reimbursed for travel and other expenses actually and necessarily incurred in the performance of their duties.

9. The provisions of this section shall automatically expire on August 28, 2018.

Expires 8-28-18

*Word "court" appears in original rolls.

Chapter 217
Department of Corrections
Section 217.703

August 28, 2013

Earned compliance credits awarded, when.

217.703. 1. The division of probation and parole shall award earned compliance credits to any offender who is:

(1) Not subject to lifetime supervision under sections 217.735 and 559.106 or otherwise found to be ineligible to earn credits by a court pursuant to subsection 2 of this section;

(2) On probation, parole, or conditional release for an offense listed in chapter 195 or for a class C or D felony, excluding the offenses of aggravated stalking, rape in the second degree, sexual assault, sodomy in the second degree, deviate sexual assault, assault in the second degree under subdivision (2) of subsection 1 of section 565.060, sexual misconduct involving a child, endangering the welfare of a child in the first degree under subdivision (2) of subsection 1 of section 568.045, incest, invasion of privacy, and abuse of a child;

(3) Supervised by the board; and

(4) In compliance with the conditions of supervision imposed by the sentencing court or board.

2. If an offender was placed on probation, parole, or conditional release for an offense of:

(1) Involuntary manslaughter in the first degree;

(2) Involuntary manslaughter in the second degree;

(3) Assault in the second degree except under subdivision (2) of subsection 1 of section 565.060;

(4) Domestic assault in the second degree;

(5) Assault of a law enforcement officer in the second degree;

(6) Statutory rape in the second degree;

(7) Statutory sodomy in the second degree;

(8) Endangering the welfare of a child in the first degree under subdivision (1) of subsection 1 of section 568.045; or

(9) Any case in which the defendant is found guilty of a felony offense under chapter 571,

the sentencing court may, upon its own motion or a motion of the prosecuting or circuit attorney, make a finding that the offender is ineligible to earn compliance credits because the nature and circumstances of the offense or the history and character of the offender indicate that a longer term of probation, parole, or conditional release is necessary for the protection of the public or the guidance of the offender. The motion may be made any time prior to the first month in which the person may earn compliance credits under this section. The offender's ability to earn credits shall be suspended until the court or board makes its finding. If the court or board finds that the offender is eligible for earned compliance credits, the credits shall begin to accrue on the first day of the next calendar month following the issuance of the decision.

3. Earned compliance credits shall reduce the term of probation, parole, or conditional release by thirty days for each full calendar month of compliance with the terms of supervision. Credits shall begin to accrue for eligible offenders after the first full calendar month of supervision or on October 1, 2012, if the offender began a term of probation, parole, or conditional release before September 1, 2012.

4. For the purposes of this section, the term "compliance" shall mean the absence of an initial violation report submitted by a probation or parole officer during a calendar month, or a motion to revoke or motion to suspend filed by a prosecuting or circuit attorney, against the offender.

5. Credits shall not accrue during any calendar month in which a violation report has been submitted or a motion to revoke or motion to suspend has been filed, and shall be suspended pending the outcome of a hearing, if a hearing is held. If no hearing is held or the court or board finds that the violation did not occur, then the offender shall be deemed to be in compliance and shall begin earning credits on the first day of the next calendar month following the month in which the report was submitted or the motion was filed. All earned credits shall be rescinded if the court or board revokes the probation or parole or the court places the offender in a department program under subsection 4 of section 559.036. Earned credits shall continue to be suspended for a period of time during which the court or board has suspended the term of probation, parole, or release, and shall begin to accrue on the first day of the next calendar month following the lifting of the suspension.

6. Offenders who are deemed by the division to be absconders shall not earn credits. For purposes of this subsection, "absconder" shall mean an offender under supervision who has left such offender's place of residency without the permission of the offender's supervising officer for the purpose of avoiding supervision. An offender shall no longer be deemed an absconder when such offender is available for active supervision.

7. Notwithstanding subsection 2 of section 217.730 to the contrary, once the combination of time served in custody, if applicable, time served on probation, parole, or conditional release, and earned compliance credits satisfy the total term of probation, parole, or conditional release, the board or sentencing court shall order final discharge of the offender, so long as the offender has completed at least two years of his or her probation or parole, which shall include any time served in custody under section 217.718 and sections 559.036 and 559.115.

8. The award or rescission of any credits earned under this section shall not be subject to appeal or any motion for postconviction relief.

9. At least twice a year, the division shall calculate the number of months the offender has remaining on his or her term of probation, parole, or conditional release, taking into consideration any earned compliance credits, and notify the offender of the length of the remaining term.

10. No less than sixty days before the date of final discharge, the division shall notify the sentencing court, the board, and, for probation cases, the circuit or prosecuting attorney of the impending discharge. If the sentencing court, the board, or the circuit or prosecuting attorney upon receiving such notice does not take any action under subsection 5 of this section, the offender shall be discharged under subsection 7 of this section.

(L. 2012 H.B. 1525, A.L. 2013 H.B. 215)

Chapter 217

Department of Corrections

Section 217.718

August 28, 2013

Alternative to revocation proceedings, period of detention, requirements.

217.718. 1. As an alternative to the revocation proceedings provided under sections 217.720, 217.722, and 559.036, and if the court has not otherwise required detention to be a condition of probation under section 559.026, a probation or parole officer may order an offender to submit to a period of detention in the county jail, or other appropriate institution, upon a determination by a probation or parole officer that the offender has violated a condition of continued probation or parole.

2. The period of detention may not exceed forty-eight hours the first time it is imposed against an offender during a term of probation or parole. Subsequent periods may exceed forty-eight hours, but the total number of hours an offender spends in detention under this section shall not exceed three hundred * sixty in any calendar year.

3. The officer shall present the offender with a written report detailing in what manner the offender has violated the conditions of parole, probation, or conditional release and advise the offender of the right to a hearing before the court or board prior to the period of detention. The division shall file a copy of the violation report with the sentencing court or board after the imposition of the period of detention and within a reasonable period of time that is consistent with existing division procedures.

4. Any offender detained under this section in a county of the first class or second class or in any city with a population of five hundred thousand or more and detained as herein provided shall be subject to all the provisions of section 221.170, even though the offender was not convicted and sentenced to a jail or workhouse.

5. If parole, probation, or conditional release is revoked and a term of imprisonment is served by reason thereof, the time spent in a jail, halfway house, honor center, workhouse, or other institution as a detention condition of parole, probation, or conditional release shall be credited against the prison or jail term served for the offense in connection with which the detention was imposed.

6. The division shall reimburse the county jail or other institution for the costs of detention under this section at a rate determined by the department of corrections, which shall be at least thirty dollars per day per offender and subject to appropriation of funds by the general assembly. Prior to ordering the offender to submit to the period of detention under subsection 1 of this section, the probation and parole officer shall certify to the county jail or institution that the division has sufficient funds to provide reimbursement for the costs of the period of detention. A jail or other

institution may refuse to detain an offender under this section if funds are not available to provide reimbursement or if there is inadequate space in the facility for the offender.

7. Upon successful completion of the period of detention under this section, the court or board may not revoke the term of parole, probation, or conditional release or impose additional periods of detention for the same incident unless new or additional information is discovered that was unknown to the division when the period of detention was imposed and indicates that the offender was involved in the commission of a crime. If the offender fails to complete the period of detention or new or additional information is discovered that the incident involved a crime, the offender may be arrested under sections 217.720 and 217.722.

(L. 2012 H.B. 1525)

*Word "and" appears here in original rolls.

Chapter 559

Probation

Section 559.036

August 28, 2013

Duration of probation--revocation.

559.036. 1. A term of probation commences on the day it is imposed. Multiple terms of Missouri probation, whether imposed at the same time or at different times, shall run concurrently. Terms of probation shall also run concurrently with any federal or other state jail, prison, probation or parole term for another offense to which the defendant is or becomes subject during the period, unless otherwise specified by the Missouri court.

2. The court may terminate a period of probation and discharge the defendant at any time before completion of the specific term fixed under section 559.016 if warranted by the conduct of the defendant and the ends of justice. The court may extend the term of the probation, but no more than one extension of any probation may be ordered except that the court may extend the term of probation by one additional year by order of the court if the defendant admits he or she has violated the conditions of probation or is found by the court to have violated the conditions of his or her probation. Total time on any probation term, including any extension shall not exceed the maximum term established in section 559.016. Procedures for termination, discharge and extension may be established by rule of court.

3. If the defendant violates a condition of probation at any time prior to the expiration or termination of the probation term, the court may continue him on the existing conditions, with or without modifying or enlarging the conditions or extending the term.

4. (1) Unless the defendant consents to the revocation of probation, if a continuation, modification, enlargement or extension is not appropriate under this section, the court shall order placement of the offender in one of the department of corrections' one hundred twenty-day programs so long as:

(a) The underlying offense for the probation is a class C or D felony or an offense listed in chapter 195; except that, the court may, upon its own motion or a motion of the prosecuting or circuit attorney, make a finding that an offender is not eligible if the underlying offense is involuntary manslaughter in the first degree, involuntary manslaughter in the second degree, aggravated stalking, assault in the second degree, sexual assault, rape in the second degree, domestic assault in the second degree, assault of a law enforcement officer in the second degree, statutory rape in the second degree, statutory sodomy in the second degree, deviate sexual assault, sodomy in the second degree, sexual misconduct involving a child, incest, endangering the welfare of a child in the first degree under subdivision (1) or (2) of subsection 1 of section 568.045, abuse of a child, invasion of privacy or any case in which the defendant is found guilty of a felony offense under chapter 571;

(b) The probation violation is not the result of the defendant being an absconder or being found guilty of, pleading guilty to, or being arrested on suspicion of any felony, misdemeanor, or infraction. For purposes of this subsection, "absconder" shall mean an offender under supervision who has left such offender's place of residency without the permission of the offender's supervising officer for the purpose of avoiding supervision;

(c) The defendant has not violated any conditions of probation involving the possession or use of weapons, or a stay-away condition prohibiting the defendant from contacting a certain individual; and

(d) The defendant has not already been placed in one of the programs by the court for the same underlying offense or during the same probation term.

(2) Upon receiving the order, the department of corrections shall conduct an assessment of the offender and place such offender in the appropriate one hundred twenty-day program under subsection 3 of section 559.115.

(3) Notwithstanding any of the provisions of subsection 3 of section 559.115 to the contrary, once the defendant has successfully completed the program under this subsection, the court shall release the defendant to continue to serve the term of probation, which shall not be modified, enlarged, or extended based on the same incident of violation. Time served in the program shall be credited as time served on any sentence imposed for the underlying offense.

5. If the defendant consents to the revocation of probation or if the defendant is not eligible under subsection 4 of this section for placement in a program and a continuation, modification, enlargement, or extension of the term under this section is not appropriate, the court may revoke probation and order that any sentence previously imposed be executed. If imposition of sentence was suspended, the court may revoke probation and impose any sentence available under section 557.011. The court may mitigate any sentence of imprisonment by reducing the prison or jail term by all or part of the time the defendant was on probation. The court may, upon revocation of probation, place an offender on a second term of probation. Such probation shall be for a term of probation as provided by section 559.016, notwithstanding any amount of time served by the offender on the first term of probation.

6. Probation shall not be revoked without giving the probationer notice and an opportunity to be heard on the issues of whether such probationer violated a condition of probation and, if a condition was violated, whether revocation is warranted under all the circumstances. Not less than five business days prior to the date set for a hearing on the violation, except for a good cause shown, the judge shall inform the probationer that he or she may have the right to request the appointment of counsel if the probationer is unable to retain counsel. If the probationer requests counsel, the judge shall determine whether counsel is necessary to protect the probationer's due process rights. If the judge determines that counsel is not necessary, the judge shall state the grounds for the decision in the record.

7. The prosecuting or circuit attorney may file a motion to revoke probation or at any time during the term of probation, the court may issue a notice to the probationer to appear to answer a

charge of a violation, and the court may issue a warrant of arrest for the violation. Such notice shall be personally served upon the probationer. The warrant shall authorize the return of the probationer to the custody of the court or to any suitable detention facility designated by the court. Upon the filing of the prosecutor's or circuit attorney's motion or on the court's own motion, the court may immediately enter an order suspending the period of probation and may order a warrant for the defendant's arrest. The probation shall remain suspended until the court rules on the prosecutor's or circuit attorney's motion, or until the court otherwise orders the probation reinstated.

8. The power of the court to revoke probation shall extend for the duration of the term of probation designated by the court and for any further period which is reasonably necessary for the adjudication of matters arising before its expiration, provided that some affirmative manifestation of an intent to conduct a revocation hearing occurs prior to the expiration of the period and that every reasonable effort is made to notify the probationer and to conduct the hearing prior to the expiration of the period.

(L. 1977 S.B. 60, A.L. 1986 S.B. 618 & 562, A.L. 1989 H.B. 408, A.L. 1995 H.B. 424, A.L. 2005 H.B. 353, A.L. 2012 H.B. 1525, A.L. 2013 H.B. 215 merged with H.B. 374 & 434)

Chapter 559

Probation

Section 559.100

August 28, 2013

Circuit courts, power to place on probation or parole--revocation--conditions--restitution.

559.100. 1. The circuit courts of this state shall have power, herein provided, to place on probation or to parole persons convicted of any offense over which they have jurisdiction, except as otherwise provided in sections 195.275 to 195.296, section 558.018, section 559.115, section 565.020, sections 566.030, 566.060, 566.067, 566.151, and 566.213, section 571.015, and subsection 3 of section 589.425.

2. The circuit court shall have the power to revoke the probation or parole previously granted under section 559.036 and commit the person to the department of corrections. The circuit court shall determine any conditions of probation or parole for the defendant that it deems necessary to ensure the successful completion of the probation or parole term, including the extension of any term of supervision for any person while on probation or parole. The circuit court may require that the defendant pay restitution for his crime. The probation or parole may be revoked under section 559.036 for failure to pay restitution or for failure to conform his behavior to the conditions imposed by the circuit court. The circuit court may, in its discretion, credit any period of probation or parole as time served on a sentence.

3. Restitution, whether court-ordered as provided in subsection 2 of this section or agreed to by the parties, or as enforced under section 558.019, shall be paid through the office of the prosecuting attorney or circuit attorney. Nothing in this section shall prohibit the prosecuting attorney or circuit attorney from contracting with or utilizing another entity for the collection of restitution and costs under this section. When ordered by the court, interest shall be allowed under subsection 1 of section 408.040. In addition to all other costs and fees allowed by law, each prosecuting attorney or circuit attorney who takes any action to collect restitution shall collect from the person paying restitution an administrative handling cost. The cost shall be twenty-five dollars for restitution of less than one hundred dollars and fifty dollars for restitution of at least one hundred dollars but less than two hundred fifty dollars. For restitution of two hundred fifty dollars or more an additional fee of ten percent of the total restitution shall be assessed, with a maximum fee for administrative handling costs not to exceed seventy-five dollars total. Notwithstanding the provisions of sections 50.525 to 50.745, the costs provided for in this subsection shall be deposited by the county treasurer into a separate interest-bearing fund to be expended by the prosecuting attorney or circuit attorney. This fund shall be known as the "Administrative Handling Cost Fund", and it shall be the fund for deposits under this section and under section 570.120. The funds shall be expended, upon warrants issued by the prosecuting attorney or circuit attorney directing the treasurer to issue checks thereon, only for purposes related to that authorized by subsection 4 of this section.

4. The moneys deposited in the fund may be used by the prosecuting attorney or circuit attorney for office supplies, postage, books, training, office equipment, capital outlay, expenses of trial and witness preparation, additional employees for the staff of the prosecuting or circuit attorney, employees' salaries, and for other lawful expenses incurred by the prosecuting or circuit attorney in the operation of that office.

5. This fund may be audited by the state auditor's office or the appropriate auditing agency.

6. If the moneys collected and deposited into this fund are not totally expended annually, then the unexpended balance shall remain in the fund and the balance shall be kept in the fund to accumulate from year to year.

7. Nothing in this section shall be construed to prohibit a crime victim from pursuing other lawful remedies against a defendant for restitution.

(L. 1990 H.B. 974, A.L. 2006 H.B. 1698, et al., A.L. 2012 H.B. 1525, A.L. 2013 H.B. 215)

Chapter 559

Probation

Section 559.105

August 28, 2013

Restitution may be ordered, when--limitation on release from probation--amount of restitution.

559.105. 1. Any person who has been found guilty of or has pled guilty to an offense may be ordered by the court to make restitution to the victim for the victim's losses due to such offense. Restitution pursuant to this section shall include, but not be limited to a victim's reasonable expenses to participate in the prosecution of the crime.

2. No person ordered by the court to pay restitution pursuant to this section shall be released from probation until such restitution is complete. If full restitution is not made within the original term of probation, the court shall order the maximum term of probation allowed for such offense.

3. Any person eligible to be released on parole shall be required, as a condition of parole, to make restitution pursuant to this section. The board of probation and parole shall not release any person from any term of parole for such offense until the person has completed such restitution, or until the maximum term of parole for such offense has been served.

4. The court may set an amount of restitution to be paid by the defendant. Said amount may be taken from the inmate's account at the department of corrections while the defendant is incarcerated. Upon conditional release or parole, if any amount of such court-ordered restitution is unpaid, the payment of the unpaid balance may be collected as a condition of conditional release or parole by the prosecuting attorney or circuit attorney under section 559.100. The prosecuting attorney or circuit attorney may refer any failure to make such restitution as a condition of conditional release or parole to the parole board for enforcement.

(L. 2005 H.B. 353, A.L. 2013 H.B. 215)

Chapter 559

Probation

Section *559.120*

August 28, 2013

Probation may be granted, when.

559.120. The circuit court may place a defendant on probation and require his participation in a program established pursuant to section 217.777 if, having regard to the nature and circumstances of the offense and to the history and character of the defendant, the court is of the opinion that:

- (1) Traditional institutional confinement of the defendant is not necessary for the protection of the public, given adequate supervision; and
- (2) The defendant is in need of guidance, training or other assistance which, in his case, can be effectively administered through participation in a community-based treatment program.

(L. 1990 H.B. 974)